

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DAVID FOLKENFLIK; NATIONAL PUBLIC	§	
RADIO, INC.; EDITH CHAPIN; LESLIE	§	
COOK; and PALLAVI GOGOI	§	
	§	
Movants,	§	
v.	§	Civ. Action No. 4:20-MC-0036-ALM
	§	
CHAPWOOD CAPITAL INVESTMENT	§	Ancillary to Civ. Action No.
MANAGEMENT, INC.	§	4:18-CV-00442-ALM
	§	
Respondent.	§	

DAVID FOLKENFLIK; NATIONAL PUBLIC	§	
RADIO, INC.; EDITH CHAPIN; LESLIE	§	
COOK; and PALLAVI GOGOI	§	
	§	
Movants,	§	
v.	§	Civ. Action No. 4:20-MC-0038-ALM
	§	
KIM SAMS	§	Ancillary to Civ. Action No.
	§	4:18-CV-00442-ALM
	§	
Respondent.	§	

**RESPONSE OF CHAPWOOD CAPITAL INVESTMENT MANAGEMENT, LLC
AND KIM SAMS TO MOTIONS TO COMPEL
CHAPWOOD CAPITAL INVESTMENT MANAGEMENT, LLC
AND KIM SAMS TO COMPLY WITH FED. R.CIV.P. 45 SUBPOENA
(DOC. 13 AND DOC. 12)**

TO THE HONORABLE JUDGE AND MAGISTRATE JUDGE
OF SAID COURT:

Come now Chapwood Capital Investment Management, LLC ("Chapwood") and Kim Sams ("Sams" with Chapwood and Sams being together referred to as "Respondents") and file this Response to the Motion to Compel Chapwood Investment Management, LLC to Comply with Fed. R. Civ. P. 45 Subpoena (the "Chapwood Motion" and the Motion to Compel Kim Sams to Comply with Fed. R. Civ. P. 45 Subpoena (the "Sams Motion" with the Chapwood Motion and Response of Chapwood Investment Management, LLC and Kim Sams to Motions to Compel

Sams Motion being together referred to as the "Motions to Compel" and state the following:

1. Chapwood and Sams acknowledge and stipulate that they have each waived their right to object to either of the Subpoena(s) served on them.
2. Sams, in her individual capacity and as the designated corporate representative, has today served on Movants all of the documents within her possession, custody and control responsive to the Subpoenas (the "Produced Documents"). Sams has testified under oath in the Affidavit attached to this Response as Exhibit "A" (the "Sams Affidavit") that she has no documents within her possession, custody and control responsive to the Subpoenas other than the Produced Documents.¹ To the extent that additional documents responsive to the Subpoenas come into the possession of Sams, she will produce them to Movants.

WHEREFORE, PREMISES CONSIDERED, Chapwood Capital Investment Management, LLC and Kim Sams ask that this Court find that the Motions to Compel have been rendered moot by Sams' and Chapwood's response and production of documents or, in the alternative, that all relief requested by Movants be denied, and for such other and further relief as is just and warranted.

Respectfully submitted,

/s/ John E. Leslie

John E. Leslie

State Bar No. 12231400

JOHN LESLIE | PLLC

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ATTORNEYS FOR CHAPWOOD CAPITAL
INVESTMENT, LLC and KIM SAMS

¹ The specific account references in the Exhibit to the Sams Affidavit have been redacted in this filing. Unredacted copies of these documents have been provided to Movants' counsel subject to the protective order entered in the main case to which these Motions are ancillary.

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Response was electronically submitted to the Clerk of the U.S. District Court for the Eastern District of Texas, using the electronic case filing system and served on all other counsel of record via ecf/Pacer on May 4, 2020.

/s/ John E. Leslie
John E. Leslie, certifying attorney

IN THE UNITED STATES DISTRICT COURT
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	§	4:18-CV-00442-ALM
	§	
Respondent.	§	

AFFIDAVIT OF KIM SAMS IN SUPPORT OF RESPONSE OF
CHAPWOOD CAPITAL INVESTMENT MANAGEMENT, LLC AND KIM SAMS
TO MOTIONS TO COMPEL CHAPWOOD CAPITAL INVESTMENT MANAGEMENT, LLC
AND KIM SAMS TO COMPLY WITH FED. R.CIV.P. 45 SUBPOENA
(DOC. 13 AND DOC. 12)

I, Kim Sams, declare under penalty of perjury as follows:

1. I have been served with a subpoena for production of documents in my capacity as the President of Chapwood Capital Investment Management, Inc. ("Chapwood" and the "Chapwood Subpoena", respectively) in the action pending in this Court filed by Ed Butowsky ("Butowsky") against the above-identified Movants under Civ. Action No. 4:18-CVB-0442-ALM (the "Butowsky Lawsuit") pending in the U.S. District Court for the Eastern District of Texas, Sherman Division. I have also been served with a subpoena for production of documents in my individual capacity (the "Sams Subpoena") in the Butowsky Lawsuit.

Exhibit A

2. I have personal knowledge of and am familiar with the Chapwood Subpoena and the Sams Subpoena and the documents sought to be produced to Movants therein (together, the "Subpoenas"). I am authorized to respond to the Subpoenas on behalf of Chapwood as its duly authorized corporate representative.

3. I have made a diligent and thorough search of my personal records, and have found no documents in my individual possession, custody or control that are responsive to any of the requests made of me in the Sams Subpoena. In my individual capacity, I have no right to demand possession of any documents responsive to any of the requests made in the Sams Subpoena that may be in the possession of another person.

4. I currently serve as the President of Chapwood and am a stockholder and member of the Board of Directors of Chapwood. I have access to all of the business records of Chapwood and am knowledgeable and familiar with its business and operations. I have made a diligent and thorough search of the business records of Chapwood and have found no documents in Chapwood's business records that are responsive to any of the requests made in the Chapwood Subpoena other than those contained in Exhibit A-1 attached hereto.

5. I am unaware of any person other than Ed Butowsky ("Butkowsky") and his prior or current lawyer(s) in the Butowsky Lawsuit that may have possession of any documents responsive to any of the requests made in the Chapwood Subpoena. Through my counsel, I have asked Butowsky to provide me with copies of any documents responsive to any of the requests in the Chapwood Subpoena and Sams Subpoena. I have received no documents responsive to this request.

6. With respect to the specific requests made in the Chapwood Subpoena, I testify as follows:

6.1. Other than the documents contained in Exhibit A-1, I have no documents referencing or relating to, or any communications between me or Chapwood and any of the following since January 1, 2014:

- a. Charles Schwab Corporation
- b. Charles Schwab & Co., Inc.
- c. Schwab Institutional Enterprises
- d. Charles R. Schwab
- e. Walter W. Betinger, II
- f. Bernard J. Clark
- g. Jonathan M. Craig
- h. Joseph R. Mafiinetto
- i. Nigel J. Murtagh
- j. William Bell
- k. Kevin Lewis

I have not communicated with any of the above-identified persons.

6.2 I have been unable to locate any documents or communications produced by Chapwood in any litigation, FINRA proceeding, NASD Dispute Resolution, or arbitration since January 1, 2009.

Exhibit A

6.3 I have been unable to locate any documents or communications that Charles Schwab & Co., Inc. may have sent to Chapwood in 2017 and 2018. I recall that Charles Schwab & Co. may have sent Chapwood a letter on or about 8/1/2017 terminating its relationship with Chapwood, but have been unable to locate such letter

6.4 I have been unable to locate any notes from meetings and conversations I or anyone associated with Chapwood may have had with Charles Schwab & Co. or its representatives other than the listing of accounts and values contained in Exhibit A-1.

6.5 I have been unable to locate any documents or communications evidencing or relating to a loss of business because of Charles Schwab & Co.'s termination of Chapwood's Investment Manager Services Agreement other than the listing of accounts and values contained in Exhibit A-1.

6.6 I am unaware of the existence of any documents or communications evidencing or relating to the loss of "over 268 customer accounts" as a result of Charles Schwab & Co.'s termination of Chapwood's Investment Manager Services Agreement other than the listing of accounts and values contained in Exhibit A-1.

6.7 I am unaware of the existence of any documents or communications evidencing attempts to find another broker-dealer and custodian for Chapwood's assets after Charles Schwab & Co. terminated its agreement with Chapwood.

6.8 I am unaware of any documents or communications evidencing the false statements and misrepresentations Charles Schwab & Co. made about Chapwood.

6.9 I am unaware of the existence of any documents or communications evidencing or relating to damages suffered as alleged in the Butowsky Lawsuit other than those terminating Chapwood's services other than the listing of accounts and values contained in Exhibit A-1.

6.10 Other than documents produced as part of Exhibit A-1 to this Affidavit, I am unaware of any documents referring or relating to, and communications with Sally Hill Davis, including communications relating to Ms. Davis' decision to remove Chapwood as her adviser on her Charles Schwab & Co. account.

6.11 I have located no documents or communications concerning any lawsuits, threats of lawsuits, consumer complaints, disciplinary actions, or accusations that accused Chapwood in its institutional or corporate capacity.

6.12 I have been unable to locate any documents or communications that may show Chapwood's annual net income between 2014 and the present time.

Signed this 4th day of May 2020.


Kim Sams

Exhibit A

State of Texas §
Collin County §

Subscribed and sworn to before me the undersigned Notary Public on this 4 day of May 2020, to which witness my hand and seal of office.



Notary Public, State of Texas

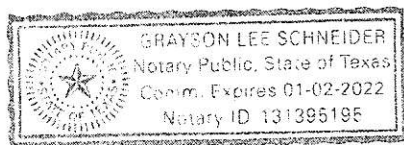


Exhibit A

Thursday, March 26, 2020 at 9:45:07 AM Central Daylight Time

Subject: Things have finally settled down here ...

Date: Wednesday, August 16, 2017 at 10:43:24 AM Central Daylight Time

From: [REDACTED]

To: Kim Sams

and I want to check in with you before I move my account back to Chapwood. You will be responsible for my account, not Ed? If so, I will move everything back.

Thank you, Kim.

All the best,

[REDACTED]

Thursday, March 26, 2020 at 9:45:56 AM Central Daylight Time

Subject: Re: Things have finally settled down here ...

Date: Wednesday, August 16, 2017 at 1:01:39 PM Central Daylight Time

From: [REDACTED]

To: Kim Sams

Kim,

I called Schwabb and they tell me this has to originate with you, with me signing paperwork that you send me. I'm sorry to have to do all this again. If we can do this electronically, that's great with me.

Thanks,
[REDACTED]

On Aug 16, 2017, at 9:57 AM, Kim Sams <kim@chapwoodinvestments.com> wrote:

Thank you for circling back. Yes, you have my word. It will be just me and my support Amy and Brittney. I didn't want to bother you with everything you had going on. Thank you for reconsidering and this means more to me than you know.

Thank you.

Kim

-----Original Message-----

From: [REDACTED]

Sent: Wednesday, August 16, 2017 10:43 AM

To: Kim Sams <kim@chapwoodinvestments.com>

Subject: Things have finally settled down here ...

and I want to check in with you before I move my account back to Chapwood. You will be responsible for my account, not Ed? If so, I will move everything back.

Thank you, Kim.

All the best,
[REDACTED]

Thursday, March 26, 2020 at 9:47:43 AM Central Daylight Time

Subject: RE: Things have finally settled down here ...
Date: Wednesday, August 16, 2017 at 10:57:53 AM Central Daylight Time
From: Kim Sams
To: [REDACTED]

Thank you for circling back. Yes, you have my word. It will be just me and my support Amy and Brittney.

I didn't want to bother you with everything you had going on. Thank you for reconsidering and this means more to me than you know.

Thank you.

Kim

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, August 16, 2017 10:43 AM
To: Kim Sams <kim@chapwoodinvestments.com>
Subject: Things have finally settled down here ...

and I want to check in with you before I move my account back to Chapwood. You will be responsible for my account, not Ed? If so, I will move everything back.

Thank you, Kim.

All the best,

[REDACTED]

[REDACTED]

Thursday, March 26, 2020 at 9:43:19 AM Central Daylight Time

Subject: my Chapwood account

Date: Thursday, August 3, 2017 at 5:29:05 PM Central Daylight Time

From: [REDACTED]

To: Ed Butowsky, Kim Sams

Hello Ed and Kim,

I'm really sad to write this email.

I have to let you know I asked Schwab to remove Chapwood Investments as the advisor on my Schwab Account. I will follow up with a phone call tomorrow, August 4.

I made this decision after reading news articles about Ed's involvement with a false news story. For me, this is not a question of politics. It's a question of ethics.

I very much appreciate all your help and guidance through the past twenty-five years or so. I'm heartbroken to end our relationship.

All the best,

[REDACTED]

Thursday, March 26, 2020 at 9:48:46 AM Central Daylight Time

Subject: RE: Things have finally settled down here ...
Date: Wednesday, August 16, 2017 at 1:38:42 PM Central Daylight Time
From: Kim Sams
To: [REDACTED]
CC: Amy Suhr, Brittney Harrison

We will get the forms prepared and will emailed to you today.

Thank you again.

Kim

-----Original Message-----

From: [REDACTED]
Sent: Wednesday, August 16, 2017 1:02 PM
To: Kim Sams <kim@chapwoodinvestments.com>
Subject: Re: Things have finally settled down here ...

Kim,

I called Schwabb and they tell me this has to originate with you, with me signing paperwork that you send me. I'm sorry to have to do all this again. If we can do this electronically, that's great with me.

Thanks,
[REDACTED]

On Aug 16, 2017, at 9:57 AM, Kim Sams <kim@chapwoodinvestments.com> wrote:

Thank you for circling back. Yes, you have my word. It will be just me and my support Amy and Brittney. I didn't want to bother you with everything you had going on. Thank you for reconsidering and this means more to me than you know.

Thank you.

Kim

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]]
Sent: Wednesday, August 16, 2017 10:43 AM
To: Kim Sams <kim@chapwoodinvestments.com>
Subject: Things have finally settled down here ...

and I want to check in with you before I move my account back to Chapwood. You will be responsible for my account, not Ed? If so, I will move everything back.

Thank you, Kim.

All the best,
[REDACTED]

Account Values	Account Number	Account Name	Custodian	Start Date	Closed Date
Last Account Value: \$4,770,590		Joint	Schwab	06/06/2017	01/22/2018
Last Account Value: \$300,000		Pretant Financial	Alternative Investment	07/19/2017	02/07/2018
Last Account Value: \$636,640		Individual	Schwab	05/08/2012	01/22/2018
Last Account Value: \$1,782,336		MCD	Schwab	12/17/2014	01/22/2018
Last Account Value: \$235,212		ROTH IRA	Schwab	12/16/2015	01/22/2018
Last Account Value: \$4,023,681		Trust	Schwab	02/17/2016	01/22/2018
Last Account Value: \$2,347,629		Trust	Schwab	02/16/2016	01/22/2018
Last Account Value: \$1,612,078		ROTH IRA	Schwab	12/16/2015	01/22/2018
Last Account Value: \$2,506,858		JP Morgan	JP Morgan	12/14/2011	8/1/2017
Last Account Value: \$493,422		ROTH IRA	Schwab	12/31/2010	01/22/2018
Last Account Value: \$8,403		SEP IRA	Schwab	04/06/2017	01/22/2018
Last Account Value: \$85,650		Chap MA	Manual Account	05/10/2016	09/24/2018
Last Account Value: \$44,963		Trust	Schwab	03/11/2015	10/24/2017
(Came back as Client)					
Undefined			TD Ameritrade	02/07/2018	02/06/2018
Undefined			TD Ameritrade	02/07/2018	02/06/2018
Undefined			TD Ameritrade	04/27/2013	02/28/2018
Undefined			TD Ameritrade	02/07/2018	02/06/2018
Undefined			Schwab	02/07/2018	02/06/2018
Undefined			Schwab	04/26/2013	04/30/2013
Undefined			Schwab	04/26/2013	04/30/2013
Undefined		Separate Property Trust	Schwab	12/31/2010	12/30/2010
(Later transfer)					
Undefined		JT	TD Ameritrade	01/24/2018	01/23/2018
Undefined		Indiv	Schwab	01/10/2012	01/09/2012
Undefined		Indiv	TD Ameritrade	01/24/2018	01/23/2018
Undefined		IRA	TD Ameritrade	01/23/2018	01/22/2018
Last Account Value: \$517,001			Manual Account	03/31/2014	02/07/2018
Last Account Value: \$231,942		Chapwood MA	Manual Account	06/30/2015	08/31/2017
Last Account Value: \$132,604		Household Expense	Schwab	01/11/2013	08/11/2017
Last Account Value: \$8,406,105		IRA	Schwab	10/08/2012	08/11/2017
Last Account Value: \$77,814		IRA	Schwab	11/14/2012	08/11/2017
Last Account Value: \$119,910		IRA	Schwab	02/17/2017	01/22/2018
Last Account Value: \$120,439		SEP IRA	Schwab	02/17/2017	01/22/2018

[REDACTED]	IRA	Schwab	02/16/2017	01/22/2018	
[REDACTED] [REDACTED] [REDACTED]	Alternative Investment Manual Account Schwab		12/23/2016 12/31/2010 12/31/2010		
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Schwab Schwab Schwab Schwab Schwab Schwab		03/02/2017 12/31/2010 01/10/2012 10/25/2012 11/01/2012	03/14/2017 12/21/2017 12/21/2017 12/21/2017 12/21/2017	
[REDACTED]	Schwab		02/16/2017	01/22/2018	
[REDACTED]	Schwab		02/16/2017	01/22/2018	
[REDACTED]	Schwab		02/16/2017	01/22/2018	
[REDACTED] [REDACTED] [REDACTED] [REDACTED]	TD Ameritrade TD Ameritrade TD Ameritrade TD Ameritrade		01/25/2018 01/10/2012 01/24/2018 01/06/2012	01/24/2018 10/19/2018 01/23/2018 10/19/2018	
[REDACTED]	JP Morgan		11/13/2012	09/28/2018	
[REDACTED] [REDACTED] - Joint [REDACTED] - Joint [REDACTED] - Joint	Chap MA Manual Account Schwab TD Ameritrade TD Ameritrade		05/05/2017 01/23/2017 01/18/2018 01/23/2017	07/03/2018 01/22/2017 01/17/2018 06/08/2018	
[REDACTED]	CUST ROTH IRA	Schwab	12/31/2010	01/22/2018	
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	SEP IRA Rollover IRA Rollover IRA Rollover Schwab Schwab		11/10/2014 07/31/2012 02/07/2017 02/07/2017 02/07/2017	10/19/2017 01/22/2018 10/19/2017 01/22/2018 10/19/2017	

